SUPREME COURT, U. S.

DEC 19 1966

JOHN F. DAVIS, CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1966

No. 878

GENE RAWDON,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit

GENE RAWDON,
5088 Esther Drive,
San Jose, California 95124,
Petitioner in Propria Persona.

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PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

1. This petition for writ of certiorari has been drafted to comply with the order and detailed requirements contained in Rule 23 of the Rules of the Supreme Court of the United States.

(a) REFERENCE TO OPINIONS

The opinions in subject case making up the matter at issue:

1. Fed. Aviation Agency Order suspending license for 30 days, dated August 17, 1960.

2. CAB Examiner's Decision No. SE-137 dated January 30, 1961.

3. Civil Aeronautics Board Order No. S-1132 suspending license 15 days, dated September 27, 1961.

4. U.S. Court order for jury trial, Templar-Kansas, dated September 28, 1962.

5. U.S. Court order denying relief, Burke-N. Calif., dated July 16, 1963.

6. U.S. Court order denying prosecution's motion for judgment without trial, March 16, 1964.

7. U.S. Court Summary Judgment without trial, Burke-N. Calif., dated June 25, 1964.

8. Denial of motion for injunctive relief, Burke-N. Calif., Ref.: Transcript Record August 2, 1965.

9. Decision of Appellate Court No. 19492, dated August 12, 1966.

10. Denial of Petition for rehearing by U.S. Appeals Court, dated September 20, 1966.

(b) GROUNDS FOR JURISDICTION OF U.S. SUPREME COURT

This is an appeal for review of Federal Agency and related U.S. Court decisions concerning an alleged violation of Federal Aviation Regulations and a Civil Aeronautics Board Order.

These matters are subject to U.S. Court enforcement and review by law. The final judgment of the U.S. Court of Appeals in such matters is subject to review by the U.S. Supreme Court.

The U.S. Appeals Court has sanctioned such a departure from the accepted and usual course of judicial proceedings by the lower court and by the Federal Aviation Agency in this case, as to call for an exercise of the Supreme Court's power of supervision to protect Appellant's (Petitioner's) equity and liberty.

(i) U.S. Court of Appeals Order in 19492 dated August 12, 1966.

Petition for rehearing filed September 9, 1966.

(ii) Petition for rehearing denied by U.S. Court of Appeals, September 20, 1966.

Petition for Writ of Certiorari filed November 8, 1966 in the United States Court of Appeals, San Francisco.

(iii) The final judgment of the U.S. Court of Appeals in such matters is subject to review by the U.S. Supreme Court, under Section 1040, Title 5, U.S. Code and Section 1254 (1) Title 28, U.S. Code and other U.S. statutes conferring general right of court review for final Agency Actions. Right of review by the U.S. Supreme Court is also provided by Section 1006 (f) of the Federal Aviation Act (Public Law 85-726).

(c) QUESTIONS PRESENTED FOR REVIEW

All the following points are at issue in this case:

1. That liberty and property may not be taken without due process of law?

2. That due process requires that federal officials must obey the law in all particulars?

3. That legality and due process are a matter of law not simply a matter of power which permits no challenge to its authority?

4. That federal officials must observe and respect the rights of defense provided by law for the accused?

5. That an individual charged with a civil offense has the right to a presumption of innocence until legally proved guilty?

6. That the burden of proof is placed by law entirely upon the prosecution?

7. That the accused does not have to prove anything?

8. That proof of violation must be established beyond any reasonable doubt prior to punishment?

9. That all doubts must necessarily be resolved in favor of the accused?

10. That any reasonable doubt constitutes lack of proof and therefore maintains the innocence of the accused?

11. That the prosecution is required to follow the rules of evidence in developing proof?

12. That proof of guilt means proof by substantive and probative evidence?

13. That no law, regulation, or order is legal which carries automatic punishment without the rights of notice, trial or hearing, and appeal for the accused?

14. That Federal officials may not enforce their own will and opinion in place of the law?

Due process, we believe, requires an affirmative answer to all of the above questions. A careful review of this case will show that Federal officials have violated every one of these basic tenets of due process on one or more instances in this case.

All these violations are supported by the complete record in this case and they will be specified and set out in Appellant's petition, under part (e).

(d) THE CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Federal Aviation Law, Public Law 85-726, Sec. 609:

> "Prior to . . . suspending or revoking any . . . certificates, the Administrator shall advise the holder thereof as to any charges or other reasons . . . for his proposed actions and *except in cases of emergency, shall provide* the holder of such a certificate *an opportunity to answer any charges* and be heard as to why such a certificate should not be . . . suspended or revoked. Any person whose certificate is affected by such order of the Administrator . . . may appeal the Administrator's order to the Board. . . . *The filing of appeal* with the Board *shall stay the effectiveness* of the Administrator's order *unless the Administrator advises* the Board *that an emergency exists and safety in air commerce . . . requires imme-*

diate effectiveness of his order, in which case the order shall remain effective *and the Board shall finally dispose of the appeal within sixty days* after being so advised by the Administrator."

Sec. 903:

"(a) The trial of any offense under this Act shall be in the district in which such offense is committed."

"(b) (1) Any civil penalty imposed under this Act may be collected by proceedings . . . against the person subject to the penalty. . . . Such proceedings shall conform as nearly as may be to civil suits in admiralty, except that *either party may demand trial by jury of any issue of fact, if the value in controversy exceeds $20.*"

Sec. 1006 (Public Law 85-726):

"(a) Any order . . . issued by the Board or Administrator under this Act, shall be subject to review by the Courts of Appeals of the United States . . . by petition, filed within sixty days after the entry of such order."

"(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board or Administrator shall be subject only to review by the Supreme Court of the United States."

Federal Register Regulations: Part 2.2 of these regulations under heading *Documents required to be filed and . . . published in the federal register,*

"(4) All documents prescribing a penalty."

"2.3 Documents determined . . . to have general applicability and legality."

Title 5, of the United States Code, Sec. 1005:

"(a) Every Agency shall separately state and currently publish in the Federal Register:

"(3) Substantive rules adopted as authorized by law . . . no person shall in any manner be required to resort to . . . procedure not so published."

"(b) No process, requirement or . . . demand shall be issued, made or enforced in any manner for any purpose except as authorized by law".

"Every Agency *shall publish* or . . . make available for public inspection . . . *all rules.*"

"(c) Matters of official record shall . . . be made available to persons properly and directly concerned, except information held confidential for good cause found."

Sec. 1006:

"(c) . . . *The proponent of an . . . order shall have the burden of proof. . . . . No sanction shall be imposed* . . . or order issued *except* upon consideration of the whole record or such portions thereof as may be cited by any party and *as supported by . . . reliable, probative, and substantive evidence. Every person shall have the right to present his case or defense* by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

"(d) the transcript of testimony and exhibits together with *all papers and requests filed* in the proceeding, shall constitute the exclusive record for decision."

Sec. 1008 (U.S. Code, Title 5):

"(a) No sanction shall be imposed . . . or order issued except within jurisdiction delegated to the agency . . . by law."

"(b) . . . No withdrawal or suspension . . . of any license shall be lawful unless, prior to the institution of agency proceedings thereof, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the Agency and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements."

"No license with respect to any activity of a continuing nature shall expire until such application shall have been fully determined by the agency."

Sec. 1009:

"(a) Any person suffering legal wrong because of any agency action or adversely affected or aggrieved by such action, shall be entitled to judicial review."

"(b) Agency action shall be subject to judicial review in civil . . . proceedings for judicial enforcement. . . ."

"(c) Every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review."

"Any preliminary procedure or intermediate agency action or rule not directly reviewable shall be subject to review upon final review of the agency action."

"(d) *Relief Pending Review:*

"Pending judicial review any agency is authorized . . . to postpone the effective date of any action taken by it.

"Upon such conditions as may be required and *to the extent necessary to prevent irreparable injury, every reviewing court . . . is authorized* to issue all necessary and appropriate process *to postpone the effective date of any agency action* or *to preserve status or rights pending conclusion of the review proceeding.*"

"(e) The reviewing court shall . . .

(A) *Compel agency action unlawfully withheld or unreasonably delayed;*

(B) Hold unlawful and set aside agency action, findings, and conclusions found to be

(1) *Arbitrary, capricious, or abuses of discretion,* or otherwise not in accordance with law,

(2) *Contrary to Constitutional right* or immunity,

(3) *In excess of statutory* jurisdiction, authority, or *limitations,* or short of statutory right,

(4) Without observance of procedure required by law,

(5) Unsupported by substantial evidence, . . .

The court shall review the whole record *or such portions thereof as may be cited by any party,* and due account shall be taken of the rule of prejudicial error."

Sec. 1011:

"Nothing in this chapter shall be held to diminish the constitutional rights of any person. . . . Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons."

". . . No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent such legislation *shall do so expressly.*"

Sec. 1040:

"The final judgment of the court of appeals . . . shall be subject to review by the Supreme Court of the United States upon writ of certiorari. . . . An aggrieved party may file such petition for writ of certiorari."

Section 8 of the Administrative Procedure Act requires that:

"Agency officials who perform investigative or prosecuting functions in that . . . case may not participate in the making of decisions."

Article I, Section 9, of the U.S. Constitution:

"(3) No bill of attainder or ex post facto law shall be passed."

Amendments to the U.S. Constitution:

Article V:

"No person shall be . . . deprived . . . of liberty or property without due process of law."

Article VIII:

"Excessive bail shall not be required nor excessive fines imposed, nor cruel or unusual punishment inflicted."

(e) STATEMENT OF THE CASE

On August 17, 1960 the Federal Aviation Agency, Kansas City Regional Office, issued an order in letter form suspending for 30 days the mechanic's license of this Appellant.

No hearing was held and no defense was allowed the accused prior to this suspension.

This suspension was imposed by the FAA as a result of their investigation of an accident to a Champion Aircraft in May, 1960. This was a non-injury accident resulting in only nominal damage to the aircraft structure.

This accident was due to the failure of the landing gear while the aircraft was taxiing at relatively slow speed.

This accident occurred only a few weeks after this Appellant had inspected this aircraft and *certified that it was airworthy.*

It was *alleged* by the FAA in their suspension order *that the aircraft was unairworthy at the time it was inspected,* and that the aircraft had been improperly inspected by this Appellant.

This suspension was appealed by Registered Letter to the CAB, staying effectiveness of the FAA suspension.

An appeal hearing was held before a CAB Examiner and a decision was rendered on January 30, 1961.

The Examiner found in part against the FAA in his decision. In this decision S-137, the Examiner found

that *it had not been proved that the aircraft was unairworthy at the time it was inspected and certified to be airworthy* by this Appellant.

The Examiner said that "the aircraft had not been inspected in accordance with . . . *any procedure or method* which was *prescribed by or acceptable to the Administrator* . . . contrary to provisions of Section 18.30 of the Civil Air Regulations."

This decision suspended Appellant's license for 15 days only, without surrender of certificate.

This suspension was appealed by registered letter to the Civil Aeronautics Board, thus staying the effectiveness of this suspension.

In mid-summer 1961 the Civil Aeronautics Board confirmed the Examiner's decision of January 30, 1961, in CAB Order S-1113.

This Appellant told the Board that he would like to appeal their decision to the U.S. Court and asked them by registered mail the specific procedure to be followed.

They replied only that it would be necessary to seek further administrative remedies by asking for a rehearing. This was promptly done by registered mail, staying the effectiveness of their order of suspension.

On October 4, 1961 Appellant received CAB Decision S-1132, dated September 27, 1961. This decision not only confirmed the previous decision but added to it. The suspension was to become effective October 7 and remain in effect for 15 days after surrender of Certificate.

On October 5, 1961 this Appellant gave the CAB Notice of Appeal by registered mail. The Regional Office of the FAA, in Kansas City, was also given notice by registered mail on the same date.

Both letters were received by the addressees and registered receipts returned to sender.

The Agency and the CAB were informed on five occasions that this Appellant wished to appeal the CAB decision to the Court, Registered Letter, July 5, Registered Letter, July 10, Registered Letter, July 29, Registered Letter, August 15, and Registered Letter, October 5, 1961.

The Federal Aviation Agency accepted the work and records transmitted to them subsequent to October 7, 1961 and did not reject or return them to this Appellant. This constituted acceptance of Notice of Appeal and proof that the suspension had been stayed by the enforcing agency, the FAA.

The FAA continued to accept Appellant's work without return, rejection or notice to Appellant for a period of some five months after October 7, 1961.

Then on March 1, 1962 they filed charges in the U.S. District Court in Kansas against this Appellant asking a possible $3,000 in fines for operating without a valid mechanic's license.

The primary penalty decision of the Federal Aviation Agency, of August 17, 1960, suspending Appellant's mechanic's license for 30 days, lacks essential legality and due process because it was imposed without a hearing and without allowing defense by the accused.

This is not in accordance with the requirements of Section 609 of the Aviation Law (Pub. Law 85-726) which requires that the holder of a license shall have *"An opportunity to answer any charges and be heard"*.

This penalty was imposed arbitrarily by prosecuting attorneys for the FAA, without hearing, and subverts the requirements of Section 8 of the Administrative Procedure Act which requires that "Agency *officials who perform* investigative or *prosecuting functions* in that . . . case *may not participate in the making of decisions*".

CAB Examiner's decision, dated January 30, 1961, found a lack of evidence to support the FAA decision on the first alleged offense.

He supported the second charge by the FAA, but reference to the record will show that these two charges are so closely related that a lack of evidence on the first charge imposes serious doubts upon the validity of the second charge.

In reading this decision the Examiner's conclusion against the Appellant was based primarily on Appellant's refusal to testify and thereby establish his innocence. However, under the law the accused is not required to testify in a penalty hearing against himself, and any determination of guilt on this premise is contrary to the requirements of the aviation law.

Civil Aeronautics Board Order No. S-1132 suspending license of Appellant for 15 days, dated September 27, 1961, does not comply with basic requirements of administrative law.

(1) It seeks to punitively enforce an arbitrary requirement by the FAA that had never been officially adopted as a regulation nor published in the Federal Register.

This is contrary to the Federal Register Act which requires under Part 2.2 that:

> *"All documents prescribing a penalty"*

are required to be filed and published in the Federal Register and under Part 2.3

> "All documents determined . . . to have general applicability and legality."

Under Title 5, U.S. Code, Sec. 1005:

> "No person shall in any manner be required to resort to . . . procedure not so published".
>
> "No process, requirement or . . . demand shall be issued, made or enforced in any manner for any purpose except as authorized by law".
>
> "Every Agency *shall publish . . . all rules.*"

CAB Order S-1113 (1st Paragraph) lacks essential specificity as to the alleged violation. However, this is required by the Administrative Procedure Act. Section 8 (b) requires:

> ". . . opinions must indicate the agency's findings . . . with such specificity as to advise . . . any reviewing court of their record and legal basis."

The Board's reference to Part 18.30 of the Regulations is not to a specific requirement concerning the alleged violation (as would normally be expected). Part 18.30 of the Civil Air Regulations is the title to

the whole book of FAA Regulations concerning maintenance of aircraft, and actually covers hundreds of detailed sections. It has no more specificity than the words: *Traffic Code, U.S. Code, Fed. Register Act,* etc. Part 18.30 is not a specific procedure.

Nowhere do these regulations contain the specific requirement which the CAB was seeking to enforce, with the indefinite statement *"any procedure or method . . . prescribed by or acceptable to the Administrator."* At best this was only an attempt at ex post facto legislation by the prosecution. No specific method was prescribed by the regulations in 18.30 for the inspection of this aircraft's landing gear.

The final determination in CAB Order S-1132 (page 2, paragraph 2), was special legislation setting forth requirements for future conduct of the Appellant. This was legislation not adjudication, and had little if any direct bearing on his past conduct.

However, this portion of the decision was used by the FAA as a cover of legality to impose a penalty without a legal determination of guilt. This is, by definition, a Bill of Attainder, unequivocally prohibited by Art. I, Sec. 9 (3) of the United States Constitution.

The record will show that the FAA enforced this Bill of Attainder secretly and without notice to this Appellant, and without hearing or trial.

The FAA accepted Appellant's *notice of appeal* and publicly accepted his work as a mechanic while secretly suspending his license, and ultimately rejecting his work ex post facto.

It was not until March 20, 1962 that Appellant was served with *notice in writing* that he had violated regulations and that his license had been indeed suspended for some 5 months. This was in the form of a Court Summons to answer charges filed by the FAA in the U.S. Court.

Section 609 of the Av. Law & the Admin. Procedure Act *require written notice prior to suspension.*

Appellant found on reading this libel that the FAA had been publicly accepting his work while privately and secretly rejecting it.

This fact is abundantly clear:

"They could not legally do both."

Appellant also learned that they had accepted part of his work and rejected his other work.

This fact is abundantly clear:

"They could not both legally accept some of his work and legally reject the rest."

An aircraft mechanic is not a free agent. All his work of any major nature must be recorded on various FAA Forms and sent in to their local office for FAA review and approval of the work described, and for their transmittal of this work record to the Aircraft Records section at Oklahoma City.

If these papers and repair records are not in order for any reason whatsoever, the FAA office will return them to the mechanic for correction or amplification before they will be approved. Or if the matter is involved the FAA will bring the papers back in per-

son and demand inspection of the aircraft and work by themselves before they will give their approval.

Every mechanic is called on from time to time to make certain corrections in the paper or his work before the aircraft on which he has done such work is considered properly licensed and its certificates in order.

If a mechanic does not receive any notice from the FAA or receive his papers back he knows that his work has received local approval and that these papers have been forwarded to the records section at Oklahoma City for the permanent file kept on each licensed aircraft.

The papers and exhibits of the prosecution purporting the show violation by this Appellant, beginning October 7, 1961, *show instead just the opposite.*

The prosecution's Exhibits B(5) and B(6) show that the FAA did not know until some time after January 18, 1962 that this Appellant had not perfected his appeal. This was supposed to be done by filing a petition for review within 60 days after the effective date of the order (unless good reason could be shown for not doing so).

Such petition was not filed for the simple reason that Appellant was unable to determine what was required. He was unable to get a copy of the Aviation Law at that time in spite of requests made to the CAB, to the FAA and to the Government Printing Office. (All claimed to be out of copies or to have none for distribution.)

Inquiry at a local law office revealed that they did not know the procedure and could not give advice until they could research the matter. Their advice was to settle the matter for the penalty, that it would not be worth the price of contesting.

Refer to Prosecution's Exhibit B(8), Repair and Alteration Form 337, dated October 12, 1961. This exhibit shows that this document was not signed by the FAA office in the space provided, *it shows that it was neither approved nor rejected.* It was not returned to the mechanic as unsatisfactory or improper or illegal nor was it forwarded to the official Aircraft Records File in Oklahoma City. It was merely held in abeyance indefinitely. *This is a clear departure from Due Process.*

Such repair and alteration records and certificates are usually forwarded by the local FAA office to the Aircraft Records Center in Oklahoma City immediately (within a week or two).

The official files in Oklahoma City on this aircraft, License No. 9423B, show that a Form 337 replacing the one executed by this Appellant on October 12, 1961 and designated Prosecution Exhibit B(8), was not forwarded to Oklahoma City until months later.

The official files on this aircraft show that the FAA went through the subterfuge of getting this aircraft reinspected in another state (without notice to this Appellant) and that the record of this work was not received in Oklahoma City until February 23, 1962.

Evidently this record was not forwarded until the FAA was ready to spring their trap on Appellant which they did by filing suit against him on March 1, 1962 asking $3,000 in fines.

The FAA files in this case were requested by this Appellant for his defense by every conceivable means. *This file shows complete lack of due process on the part of the FAA.*

Requests for this file for use by the accused in his defense were made directly to the Justice Department and to the FAA on many occasions but they were not honored. Four or five motions by the accused to the U.S. Courts to subpoena this file for the defense under his rights of discovery were subverted or denied.

Prior to the judgment without trial handed down in June 1964, in favor of the prosecution, not a single document was allowed in the record for the defense.

In this case *not a single piece of defense was allowed the accused. Not a single witness, deposition, cross-examination or impeachment document was allowed the defense,* and his affidavits denying important allegations by the prosecution were ignored.

SUMMARY OF ARGUMENT

1. This Appellant has not been guilty of any legal offense in this case.

2. He has not been careless, negligent nor incompetent, nor has he used bad judgment in the inspection

of aircraft—and it has not been officially so charged in this case.

3. He has caused no damage to aircraft nor injury to any person—and this was even agreed to by the Prosecutor in his brief to the CAB in which he said:

> "We are not now and never have contended that Respondent's inspection had anything to do with the accident to the aircraft."

And even though the charges grew out of the FAA investigation of the accident to this aircraft he stated further: that any attempt by the Respondent to defend himself on the basis of the accident to the aircraft were irrelevant to the issue.

4. Appellant has not been guilty of violating any legally executed order of a Federal Agency.

In carrying on a continuing function for which the licensee has been fully qualified no offense as the one charged is legally possible unless it is committed with knowledge and intent.

5. *This Appellant had no knowledge of the FAA actions against his license* because of their *failure to properly notify him* and their secrecy and overt efforts to hide their actions from him.

6. When this Appellant was notified in writing, in March 1962, the suspension was made retroactive to October 7, 1961.

But under the Administrative Procedure Act no retroactive punishment is legally possible.

7. When Appellant was notified in March 1962 of the FAA actions he was subjected to a retroactive

punishment already 10 times the original suspension assessed.

8. Appellant was held for trial, under threat of a $3,000 fine for some 28 months, with a continuous penalty suspension ruthlessly enforced for this entire period.

9. All pleas for stay, amnesty or reprieve while this matter was awaiting trial to determine guilt were denied.

10. After this case had been docketed and scheduled for trial by jury, under provisions of the law, the U.S. Court in San Francisco issued a summary judgment without trial, in favor of the prosecution, in June 1964.

11. This decision was rendered without allowing any defense or impeachment of the Government's case, and in spite of the fact that the Prosecution had been denied a decision without trial on three separate occasions by three different federal judges.

12. And while this judgment has been under appeal for approximately 2½ years the FAA, the Justice Department and the U.S. Courts have denied all pleadings and motions for relief from continuous and unlimited punishment.

IMPROPER ACTIONS OF FEDERAL OFFICIALS

1. Federal officials knowingly denied rights of appeal to the accused when he was seeking to exercise these rights.

2. Rights of appeal must be respected unless they are knowingly waived or defaulted. These rights were denied by official subterfuge.

3. The Government has ignored the facts.

4. It has misrepresented its case.

5. It has endeavored to conceal a full disclosure of the truth.

6. It has circumvented rights of the accused to discovery and subpoena of documents for his defense.

7. It has denied the rights provided by law for trial and defense.

8. It has acted with extreme prejudice.

9. Exceeded its privileges and prerogatives.

10. Abused its discretion.

11. Exceeded the legal limits set by law.

12. Acted without authority of law.

13. Violated express provisions of statute and administrative law and circumvented legal procedures.

14. Improperly denied relief.

15. Taken liberty and property without due process.

16. Violated Appellant's constitutional rights and their own oath of office.

RELIEF SOUGHT BY PETITIONER

For good and sufficient reasons set forth herein Petitioner is asking the U.S. Supreme Court to set aside (with prejudice):

1. CAB decision S-1132 suspending Petitioner's mechanic's license.

2. U.S. Court's decision in 41427, of June 25, 1964, imposing fine.

3. The U.S. Court of Appeals' decision in No. 19492 of September 20, 1966, upholding fine and denying rehearing.

It is also requested that the Court issue mandatory relief to Petitioner from the FAA's continuous and unlimited punishment.

That full operating rights be immediately restored to Petitioner which are normally conveyed by Mechanic's License No. 12642, made out in his name.

Dated, San Jose, California,
December 14, 1966.

GENE RAWDON,
Petitioner in Propria Persona.

(Appendix Follows)

Appendix

United States Court of Appeals
for the Ninth Circuit

No. 19,492

Gene Rawdon,
Appellant,
vs.
United States of America,
Appellee.

[August 12, 1966]

Appeal from the United States District Court for the Northern District of California, Southern Division.

Before CHAMBERS, POPE and HAMLEY, Circuit Judges.

PER CURIAM.

On and prior to the 7th day of August, 1960, the appellant Rawdon held an airman mechanic certificate issued to him pursuant to the Federal Aviation program authorizing him to perform periodic inspections on civil aircraft as provided in 49 U.S.C. Sec. 1429. On August 17, 1960, the administrator of the Federal

Aviation Agency issued an order suspending his airman mechanic certificate for a period of thirty days. Following Rawdon's appeal from that order, and after a hearing before a hearing examiner of the Civil Aeronautics Board at which Rawdon was present and defended himself, the hearing examiner issued an initial decision ordering suspension of said airman mechanic certificate for a period of fifteen days. Upon review of that initial decision by the full Aeronautic Board it was affirmed.

Rawdon petitioned the Board for reconsideration. On the 27th day of September, 1961, the Board denied his petition and issued an order suspending his airman mechanic certificate for fifteen days. Said order further provided that if Rawdon failed to surrender his certificate to the Regional Counsel, Federal Aviation Agency, Kansas City, Missouri, on or before October 7, 1961, the suspension order would continue for an additional period of fifteen days subsequent to the actual date of surrender. Such surrender has not been made.

Following the Board's order no petition for review thereof was ever filed by Rawdon as authorized by 49 U.S.C. Sec. 1486, and in consequence thereof the same became final and by reason of the circumstances above mentioned this certificate remained and still remains suspended and inoperative.

On March 1, 1962, the United States filed in the District Court of the district wherein Rawdon resided and wherein he had held his airman mechanic certificate a libel of information and complaint alleging that

notwithstanding the suspension of his certificate in the manner above described, Rawdon on October 11, 1961, and on October 12, 1961, and on February 4, 1962, performed periodic inspection on three described civil aircraft and certified that the same were then in airworthy condition. It was alleged that thereby appellant violated Sec. 1430(a)(2) and hence was subject to the civil penalties provided for in Title 49 Sec. 1471 U.S.C. The prayer was for a decree for recovery of appropriate penalties to be fixed by the court.

After service of process on the appellant and after answer had been filed by him, it was made to appear to the court that when the action had been filed that Rawdon had removed his residence to San Jose, California, in the northern district of California, and an order was made changing the venue of said action to the United States District Court for the Northern District of California at San Francisco. Thereafter the United States filed a motion for summary judgment with supporting affidavits and exhibits. After an initial order granting this summary judgment had been set aside, the motion for summary judgment was renewed and granted and the civil penalty was fixed in the amount of $100 on account of each of the three violations alleged in the complaint, making a total of $300 awarded as civil penalties, together with costs of action, and judgment was entered accordingly. This is an appeal from that judgment.

As the motion for summary judgment was supported by proper affidavit showing and disclosing all the facts herein before stated, that the certificate referred to

had been suspended and had remained suspended and no petition for court review of the order of suspension had ever been filed; that the inspections referred to were actually made and certified by the appellant after his certificate had thus been suspended, and as no countershowing as required by Rule 56 of the Rules of Civil Procedure was made by and on behalf of the appellant, it is plain that the entry of the summary judgment was proper and accordingly the same is affirmed.

During the course of the proceeedings in this court appellant made application to have the record amplified by requirement that all the proceedings before the Civil Aeronautics Board be incorporated in this record. In view of the circumstances above related it is obvious that appellant was not entitled to have such matters added to the record here.

United States Court of Appeals
For the Ninth Circuit

No. 19,492

Gene Rawdon,
Appellant,
vs.
United States of America,
Appellee.

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered August 12, 1966.

Registered

5088 Esther Drive,
San Jose 24, Calif.
May 31, 1963

James P. Welsh, Clerk
United States District Court,
San Francisco 1, California
SUB: Motion for Judicial Relief
Civil Action No. 41427-DC ND Calif.
and No. W-2589-DC Kan.

Dear Mr. Welsh:

In connection with the above action this respondent has been subjected to unnecessary and what he truly believes to be illegal abuse by the Federal Aviation Agency. By this letter respondent is officially presenting to the court a motion on his own behalf for relief in this matter.

For well over a year now he has been prevented from pursueing his vocation in the aviation industry, one which he has actively followed thruout his entire adult life (over 25-years) till summarily prevented from doing so by the Federal Aviation Agency. The following is self-explanatory.

1. Whatever the merits of the Government's case maybe, no charges that any injury or damage was caused by this respondent have been made by the Federal Aviation Agency, much less proved.
2. No allegations of any overt act on the part of this respondent has been made by the Government, much less proved.

3. Also no allegations of any lack of ability or competence has been made or proved.
4. The continued withholding of respondent's operating rights in his Aircraft Mechanic's Certificate, while this case is waiting adjudication by the court, constitutes punishment before a determination of guilt.
5. Article V of the Bill of Rights to the Constitution guarantees the individual against the taking of his liberty or his property without due process of law.
6. This continued punishment before a determination of guilt, *indefinite and unlimited in extent,* constitutes an excessive fine and punishment by any reasonable definition of the term.
7. Article VIII of the Bill of Rights to the Constitution guarantees the individual against excessive fines or punishment.
8. Therefore, this respondent asks the court to order the Federal Aviation Agency, Third Region, Kansas City, Missouri to restore respondent's full operating rights to his Mechanic's Certificate No. 12642 without further delay because of this grave injustice to him that is done by the Federal Aviation Agency's continued denial to him of his normal means of a livelihood.

This respondent has officially petitioned the Federal Aviation Agency directly on several different and distinct occasions for this relief. No consideration whatever has been granted.

There is no doubt whatever about the FAA's legal authority to modify, mitigate, suspend, or withdraw any such order which they have issued without in any way impairing their cause in the above action but there is a very grave doubt about the legality of their actions in this continued denial of a fundamental right to liberty and property.

In the abscense of positive and compelling government evidence to the contrary the truth of these statements and this injury are self-evident.

It is this respondent's understanding that the primary duty of the court is to establish justice and in-so-far-as possible to protect everyone's rights both private and public.

Therefore, a decision in favor of this respondent on this motion is earnestly asked in the interests of equity and justice.

Very truly yours,
Gene Rawdon,
Respondent

GR/g

Copy Served on U.S. Atty. Robt. N. Ensign by registered mail June 1, 1963.

Original Filed
July 16, 1963
Clerk, U. S. Dist. Court
San Francisco

In the United States District Court
for the Northern District of California,
Southern Division

Civil No. 41427

United States of America,
Libelant,
vs.
Gene Rawdon,
Libelee.

ORDER DENYING DEFENDANT'S MOTION

By letter dated May 31, 1963 addressed to the Clerk of this Court, purporting to be, and treated as, a Motion, defendant asks the Court to order the Federal Aviation Agency to restore his rights under the Airman Mechanic Certificate referred to in the complaint. The Court having heard and considered the motion on July 15, 1963, but lacking power to make such order in this proceeding,

It Is Hereby Ordered that the motion is denied.

Dated: July 15, 1963.

Lloyd H. Burke
United States District Judge

x

Original Filed
April 7, 1964
Clerk, U. S. Dist. Court
San Francisco

In the United States District Court
for the Northern District of California,
Southern Division

Civil No. 41427

United States of America,
Plaintiff,
vs.
Gene Rawdon,
Defendant.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Plaintiff's Motion for Summary Judgment having been heard on March 16, 1964, and the court having reviewed the memoranda, supporting affidavit and exhibits filed herein, and it appearing that there is a genuine issue of fact as to whether defendant received timely notice of the Civil Aeronautics Board's Suspension Order No. S-1132, dated September 27, 1961;

It Is Ordered that plaintiff's Motion For Summary Judgment be, and the same hereby is, Denied, without prejudice.

Dated: April 6, 1964

Albert C. Wollenberg
United States District Judge

In the District Court of the United States
for the Northern District of California
Southern Division

Before: Lloyd H. Burke, Judge

No. 41,427

United States of America,
Plaintiff,

vs.

Gene Rawdon,
Defendant.

MOTION FOR AUGMENTATION OF THE RECORD ON APPEAL

REPORTER'S TRANSCRIPT
August 2, 1965

Reported by:
Eldon N. Rich

Mr. Rawdon: How will I get it in the record? Do I have to make another trip to San Francisco and miss a day's work just to get it in the record?

Mr. Ensign: I will be glad to draw up an order which will cover that.

Mr. Rawdon: Okay, that's agreed, then. There's another thing I would like to ask, and *I would like to move for injunctive relief from the Federal Aviation Agency for imposing an additional penalty upon me other than what they asked the Court for and collateral with the punishments that you meted out,* but which is now on appeal.

The Court: What was my disposition?

Mr. Ensign: On summary judgment, Your Honor.

The Court: Minimum fine, was it not?

Mr. Ensign: Yes, it was a very modest civil penalty.

The Court: I think that part of the confusion in this situation, Mr. Rawdon, arises from the fact that as a layman you do not appreciate the very limited function of the District Court in connection with the review of action by an administrative agency.

Mr. Rawdon: Well, I know that—pardon me. I know that courts do and have, when a matter like this comes up for review, they do correct an inequity or an injustice, and you cannot always get it before a Court, I realize that, but this matter was properly before the Court and it should be enjoined from an illegal penalty, illegally imposed. It's a penalty which was invoked without a hearing and from which I had no right of defense and no right to submit evidence, and it's continuous and unlimited, and any penalty that's continuous and unlimited is illegal.

The Court: Well, of course it's no more than stating in a little different way your position at the time the action was taken by the Government in connection with the action of the Civil Aeronautics Agency.

Mr. Rawdon: *Isn't it perfectly obvious an unlimited penalty is illegal?*

The Court: *Well, I don't know, Mr. Rawdon. That's why you are taking your appeal, and that's going to be the question that you will have to present to the Court of Appeals.*

No. 19492

in the

United States Court of Appeals

For The Ninth Circuit

at

San Francisco, California

Gene Rawdon,

Appellant,

vs.

United States,

Appellee.

MOTION FOR MANDATORY RELIEF FROM EXCESSIVE AND ILLEGAL PUNISHMENT IMPOSED BY THE FEDERAL AVIATION AGENCY

Submitted by Certified Mail
No. 132544
This 25th Day of May, 1966
By: /s/ Gene Rawdon
Gene Rawdon
Appellant in 19492
5088 Esther Dr.
San Jose, Calif.

Copy by Cert. Mail
No. 132545 to:
Robt. Ensign, Asst U.S. Attny
450 Golden Gate,
San Francisco, Calif.
May 25, 1966

Pg-2 No. 19492

MOTION FOR MANDATORY RELIEF

It is respectfully requested that the Court require the Fed. Aviation Agency, at Kansas City, Missouri, to restore full operating rights in Appellant's Airplane and Powerplant License, Airman Certificate No. 12642.

These operating rights were withdrawn from Appellant without due process of law by the Federal Aviation Agency, at Kansas City, Missouri.

This represents colatteral and additional punishment over and above that determined by the Court for the same offense.

Therefore, these operating rights in said certificate should be restored without further delay.

By: /s/ Gene Rawdon
Gene Rawdon
Appellant in 19492
May 25, 1966

5088 Esther Dr.
San Jose, Calif
May 25, 1966

Wm. B. Luck, Clerk
United States Appellate Court
San Francisco, California
94101

Sub: Motion for Mandatory Relief
Dear Mr. Luck:

This Appellant wishes to submit the enclosed motion before the Court for mandatory relief from penalty unlawfully imposed without due process.

This penalty was capriciously inflicted by the Federal Aviation Agency and represents additional punishment to that determined by the Court for the same offense.

Very truly yours,
/s/ Gene Rawdon
Gene Rawdon
Appellant in 19492

GR/g

P.S.—Please set this hearing for Monday, June 6, 1966. Will you also please confirm this setting to this Appellant?

(Letterhead of
Civil Aeronautics Board
Washington, D.C. 20428)

May 5, 1966

Mr. O. G. Sanders
Riverside Airport
Rural Route #7
Wichita, Kansas

Dear Mr. Sanders:

Upon my return to the office after a hearing trip and period of leave, I find your letter of April 11, 1966 regarding Mr. Gene Rawdon. You ask me to ascertain whether I know of a letter which Mr. Rawdon wrote to the Board expressing a desire "to appeal the C.A.B. suspension." You also state that, relative to the merits of the proceedings involving Mr. Rawdon's certificate, you have subsequent to the proceedings discovered that the manual for the airplane in question in listing procedures for lubrication contained additional information which might have had a bearing in his favor, had the evidence been introduced. You do not believe in any event that Mr. Rawdon deliberately disobeyed an order.

The record file of the proceeding in question is not available in the Board's files since it has been sent to the government's Archives. While it might be possible to recover the file, it would be my personal reaction that Mr. Rawdon's case would be just as strong to the Court on *the basis of his statement of what you imply,* if that is the fact, *that he thought the decision was stayed* either *because it was under appeal*

or being held pending a notification which would later formally institute an appeal. *He,* of course, is not a lawyer and in the controversy in question *was accustomed to the very informal manner in which the Board's rules allow stays of orders during appeals* of them in air safety enforcement proceedings. I do not see how the presence or absence of his letter requesting an appeal, whether in the Board's file or not in that file, would substantially help his case before the Court.

If I should happen to be wrong in my conclusion and such a reference to the file would be regarded as helpful by the Court, a request should be made to the Board's Chief Hearing Examiner and to the Secretary of the Civil Aeronautics Board, under whose jurisdiction the Chief of the Docket Section (Mrs. Jane Mandell) operates. The name of the Chief Hearing Examiner is Mr. Francis H. Brown and of the Secretary, Mr. Harold R. Sanderson. A letter addressed to both will be received if addressed to the Civil Aeronautics Board, Washington, D. C. 20428.

It was unfortunate that Mr. Rawdon, particularly if he was trying to vindicate his own rights and those of others, did not retain legal counsel in the conduct of his business and in the proceedings before the Board which led to his present difficulties. Although undertaking to represent himself was his free act, *a reviewer of his case should know that good lawyers experienced in the specialty of air safety enforcement are,* while available, *not always easy to find,* and that Mr. Rawdon had been successful in a previous pro-

ceeding without legal representation. My knowledge of him is confined to the proceedings before me, but *it might possibly be helpful for me to state that in them he appeared to be a man of very strong opinions, not always legally well founded, but nevertheless a man who was capable as an aircraft ("A & E") mechanic and definitely had a thoroughly respectful regard for the public safety,*—preferring his own methods and procedures to those of the Administrator in some instances, but *not hypocritical, blindly recalcitrant, or unreflective. By character and disposition he appeared to be a man of integrity and good will, very definitely not to be the sort of man who is contemptuous of law or orders.*

Yours very truly,
/s/ H. G. Moorhead
H. G. Moorhead
Hearing Examiner

P.S. I am returning the manual which you forwarded in your letter of April 11, 1966.

cc: Mr. Gene Rawdon
5088 Esther Drive
San Jose, California

United States Court of Appeals
Ninth Circuit

No. 19,492

Gene Rawdon,
Appellant,
vs.
United States,
Appellee.

On Petition for Rehearing

Before CHAMBERS, POPE and HAMLEY, Circuit Judges.

The Petition for Rehearing is denied.

Richard H. Chambers
Walter L. Pope
Frederick G. Hamley
United States Circuit Judges

Filed Sept. 20, 1966
Wm. B. Luck, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 878

GENE RAWDON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Upon the government's complaint and motion for summary judgment in the United States District Court for the Northern District of California, petitioner was assessed a total penalty of $300 for performing three inspections on civil aircraft at a time when his airman mechanic certificate had been suspended, in violation of 49 U.S.C. 1430(a)(2) (R. II, 76, 88, 175-176).[1] The court of appeals affirmed the

[1] The record in this Court consists of five volumes. Volume II contains all of the pertinent documents and it has been paginated separately.

judgment in a *per curiam* opinion (R. II, 2-4; Pet. App. i-v).

1. Based on information acquired during the investigation of an aircraft accident on April 27, 1960, the Administrator of the Federal Aviation Agency issued an Order of Suspension pursuant to Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. 1429), suspending petitioner's airman mechanic certificate for a period of thirty days (R. II, 135). The order recited (1) that on April 20, 1960, petitioner had certified that the aircraft had been given a complete 100-hour inspection and was found to be airworthy, when, in fact, the aircraft was not airworthy, and (2) that the inspection had not been accomplished in accordance with the procedures prescribed by the Administrator, contrary to Section 18.30 of the Civil Air Regulations (14 C.F.R. 18.30 (1956)). The order of suspension informed petitioner of his right to appeal to the Civil Aeronautics Board (R. II, 136).

Petitioner appealed to the Civil Aeronautics Board and a hearing was held before an examiner. On January 30, 1961, the examiner found the evidence insufficient to establish lack of airworthiness of the aircraft at the time of the inspection but found that petitioner had not conducted parts of the inspection in accordance with prescribed procedure (R. II, 115-133). Accordingly, he reduced the suspension of petioner's airman certificate to a period of fifteen days. Petitioner's appeal to the full Civil Aeronautics Board was denied on June 15, 1961, the Board having determined that the Examiner's findings were supported by substantial, reliable and probative evidence

(R. II, 113-114). A petition for reconsideration was denied by the Board on September 27, 1961. An order was entered directing that the fifteen-day suspension become effective on October 7, 1961, with the proviso that, if petitioner failed to surrender his certificate by that date, the suspension would continue for a period of 15 days subsequent to the actual date of surrender (R. II, 110-111). Petitioner received notice of the final order by registered mail on October 4, 1961 (R. II, 93). He did not petition for review of the order in a court of appeals (R. II, 107-108).[2] Nor has he yet surrendered his airman certificate to the Regional Counsel of the Federal Aviation Agency as directed.[3]

On March 1, 1962, the government filed a libel in the United States District Court for the District of Kansas alleging that petitioner had exercised the privileges of the airman certificate subsequent to its suspension by performing inspections on three different aircraft on dates subsequent to the effective date of the order, thereby violating 49 U.S.C. 1430(a)(2) (R. II, 175-176). On April 2, 1963, the district court in Kansas transferred the action to the District Court for the Northern District of California (R. II, 151-152), petitioner having moved to the latter district.

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[2] Since no stay was sought in a court of appeals, see 49 U.S.C. 1486(d), the order became effective on the date specified therein.

[3] Petitioner may comply with the order of suspension by surrendering his certificate (in person or by mail) to the nearest General Aviation, Air Carrier, or Regional Offices of the FAA.

On March 6, 1964, the government filed a motion for summary judgment, setting forth the facts in affidavit form and attaching thereto the suspension orders and the inspection forms evidencing petitioner's exercise of his airman's privileges subsequent to the suspension order (R. II, 140-145). The motion was denied because it did not affirmatively appear that petitioner had received notice of the final suspension order (R. II, 138-139). On April 30, 1964, the government again moved for summary judgment, attaching, in addition to the other documents, a post office receipt showing that petitioner had received the final suspension order on October 4, 1961 (R. II, 88-90, 93, 99-101, 103-106). The district court granted the motion for summary judgment and assessed a penalty of $300 (R. II, 76).

2. The substance of petitioner's many contentions is an attack on the suspension of his airman mechanic certificate on October 7, 1961, so as to make him liable for civil penalties for subsequent exercise of privileges thereunder. There is no merit to petitioner's complaints. After the Administrator gave petitioner notice of suspension, the matter was heard in accordance with appropriate provisions by a Civil Aeronautics Board hearing examiner. Thereafter, it was reviewed by the full Civil Aeronautics Board and reconsidered by the Board on petitioner's motion. The suspension did not become final and effective until after that plenary consideration, and petitioner was given actual notice of the suspension and the effective date thereof. The order was not stayed, as petitioner apparently believes (see Pet. 13), by his informing

the agencies that he intended to "appeal." Nor did he petition a court of appeals for review of the order. The fact of suspension and the fact that petitioner had conducted the aircraft inspections alleged in the libel were uncontroverted in the district court. Disposition upon the government's motion for summary judgment was therefore proper, as the court of appeals held.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
PAUL C. SUMMITT,
Attorneys.

JANUARY 1967.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 243489 533